

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 25, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 12MD-061
Maui

Consent to Assign Grant of Non-Exclusive Easement No. S-5798, Frederic W.C. and Mary F.C. Constant, Assignor, to Maui Happy Place, LLC., Assignee; Amendment of Grant of Non-Exclusive Easement No. S-5798 to Allow Easement to Run with the Land Identified as Tax Map Key No.: (2) 2-1-006:006 situate at Honuaula, Makawao, Maui, Further Identified as Tax Map Key: (2) 2-1-006: Por. of 098.

APPLICANT:

Frederic W.C. and Mary F. C. Constant, as Assignor, to Maui Happy Place, LLC., a Hawaii Limited Liability Company, as Assignee.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Makena situated at Honuaula, Makawao, Maui, identified by Tax Map Key: (2) 2-1-006: por. of 098, as shown on the attached map labeled Exhibit 2.

AREA:

1040 square feet, more or less.

Refer to Meets and Bounds description and CSF map number 23,516 for easements 1 and 2 at the subject location labeled as Exhibit 3.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

CHARACTER OF USE:

Right, privilege and authority to use, maintain, and repair a rock wall over, under and across State-owned land.

TERM OF LEASE:

30 years, commencing on January 10, 2003 and expiring on January 9, 2033.

CONSIDERATION:

One time payment was made by the Constant's in the amount of \$47,000.00. No monetary consideration will be paid for the assignment of the easement.

DCCA VERIFICATION:ASSIGNOR:

Is a landowner and as such is not required to register with DCCA.

ASSIGNEE:

Place of business registration confirmed:	YES	<u>x</u>	NO
Registered business name confirmed:	YES	<u>x</u>	NO
Good standing confirmed:	YES	<u>x</u>	NO

REMARKS:

On January 10, 2003, the Board of Land and Natural Resources, under agenda Item D-26, (attached as Exhibit 1) approved the issuance of a term, non-exclusive easement to Frederic W.C. and Mary F. C. Constant, covering the subject area for rock wall purposes.

A warranty deed, dated December 14, 2011, transferring the private property (parcel 006) from the Constant's to Maui Happy Place, LLC confirms the sale and transfer of the property.

Staff is requesting approval to amend the existing easement to be transferred to the new property owner for the previously Board approved purposes and remaining 21 years of the original 30 year non-exclusive easement.

The easement shall expire on January 9, 2033.

General Lease No. 5798 is an older term non-exclusive easement instrument that requires the Board's approval prior to assignment of the easement. Staff is recommending that General Lease No. 5798 be amended to state that the easement will run with parcel 006, provided that subsequent assignees are specifically apprised

of the insurance requirement in writing. This will eliminate the need for Board action on future consents to assignment.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Refer to the previously approved Board submittal (Exhibit 1) for agency and community comments, which were solicited at the time of the original issuance of this easement.

The surrounding State parcel (098) is part of the Ahihi-Kinohi'o Natural Area Reserve (NAR). The Division of Forestry and Wildlife, Natural Area Reserve - Maui, had no objection to the granting of the subject easement.

RECOMMENDATION:

That the Board:

A. Consent to the assignment of General Lease No. S-5798 from Frederic W.C. and Mary F. C. Constant, as Assignor, to Maui Happy Place, LLC, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;

2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

B. Authorize the amendment of Grant of Non-Exclusive Easement, GL S-5798, under terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-1-006:006, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance

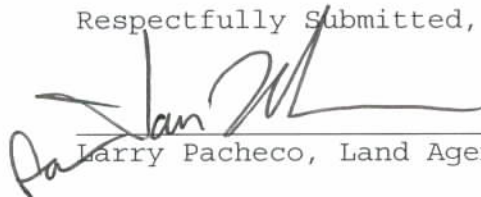
requirement in writing, separate and apart from this easement document;

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 2-1-006:006, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Review and approval by the Department of the Attorney General; and

4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 10, 2003

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 02MD-443

Maui

Grant of Term, Non-Exclusive Easement to Frederic W.C. and
Mary F.C. CONSTANT for Rockwall Purposes, Honuaula, Makawao,
Maui, Tax Map Key: (2) 2-1-006: Por. 098.

APPLICANT:

Frederic W.C. and Mary F.C. CONSTANT, husband and wife, as
tenants in the entirety, whose mailing address is
Calistoga, California 94515.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands located at Honuaula, Makawao, Maui,
further identified as tax map key (2) 2-1-006: 098, as shown on
the attached maps labeled Exhibits A and B.

AREA:

1,040 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Maui CZO: None

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Encumbered by Executive Order No. 2668 to the Department of Land
and Natural Resources for the Ahihi-Kinau Natural Area Reserve.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

ITEM D-26

1/10/03

EXHIBIT " 1 "

CHARACTER OF USE:

Rock wall purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

LEASE TERM:

Thirty (30) years.

CONSIDERATION:

One time, lump sum payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The existing rock wall, including the portions that are encroaching onto State lands on the Ahihi Bay side, was reconstructed between 1974 and 1986, prior to enactment of Conservation land use laws. The foundation stones were in place at least 55 years ago. Further, the proposed use does not differ with the existing use, and there will be negligible or no expansion or change beyond that previously existing.

DCCA VERIFICATION:

Not applicable - applicants are individuals.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Deposit an amount with the Department representing the estimated consideration of the easement and associated fees;
- 2) Pay for an appraisal to determine one time, lump sum payment;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 4) Pay a \$500.00 administrative fine for encroachment upon public lands.

REMARKS:

The Applicants purchased parcel 006 in April of 2002 and are trying to resolve certain encroachments found extending onto State land. Parcel 006 is bordered on the south, west and north by the subject State owned parcel 098, and by the government road on the east. The State land is part of the Ahihi-Kinau Natural Area Reserve (NAR). There are encroaching walls and planters on the South side (Ahihi Bay side). The existing rock wall, designated as State Site No. 50-50-14-5121, extends southward

from the private land onto parcel 098. According to an archaeological survey, the foundation stones for the rock wall were in place at least 55 years ago and potentially date back to the mid 1800s. The wall was reconstructed in 1974 and 1986.

There are also smaller encroachments adjacent to the County road consisting of low rock planters. The Applicants will be removing the encroachments in this area.

After a site inspection in 2000 and upon review of information gathered, the DLNR Coastal Lands Program [CLP] staff has determined that:

1. Long existing encroachments would not have an impact on sandy beaches, since the shoreline in the immediate vicinity is rocky in nature. The wall is situated too far above the wash of waves to influence sand transport during normal conditions;
2. Since the wall is being preserved as a historic site, staff believes it would be counterintuitive to require the owner to remove it; and
3. The most effective way to resolve the encroachment is to entertain an easement to the applicant.

Conservation District Use Application [MA-3111 D] was accepted on October 23, 2002, for the renovation and extension of the single-family residence on parcel 006. The departmental permit approved the addition of two bedrooms and two bathrooms on the second floor of the existing structure, together with proposed landscape improvements.

Although the Applicant has submitted construction plans to proceed with the renovations, the Planning Branch staff will not sign off on the plans until the encroachment is resolved. Similar to encroachments found during shoreline certifications, staff is recommending that we accept an estimated consideration amount, including the amount of the fine and document fees, from the Applicant to allow for the processing of the construction plans. The deposit will provide some security that the Applicant will follow through with the consummation of the encroachment easement. After an independent appraisal is conducted, excess funds will be reimbursed if necessary.

The applicants have not had a lease, permit, easement or other disposition of State lands within the last five years.

AGENCY COMMENTS:

The Department of Hawaiian Home Lands did not respond.

The Office of Hawaiian Affairs deems the maintenance of the rockwall is being done in the interest of an adjacent Jacuzzi. If the Jacuzzi is not already in place, OHA recommends that it be

moved away from the wall. OHA also suggests that the landowners seek the input of Native Hawaiians in the area regarding the appropriate maintenance they intend to perform.

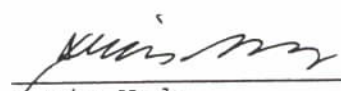
The State Historic Preservation Division, the Department of Health, and the County Planning Department did not comment as they already did so during the CDUA process.

The Division of Forestry and Wildlife, Natural Area Reserve-Maui, had no objection to the granting of the subject easement. They did request that the term of the easement be less rather than more considering the highly protective status of the NAR.

RECOMMENDATION: That the Board:

1. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Authorize assessing the \$500.00 administrative penalty pursuant to HRS 171-6(12), for encroachment on public lands; and
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Frederic W.C. and Mary F.C. CONSTANT, covering the subject area for rockwall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Louis Wada
Land Agent

APPROVED FOR SUBMITTAL:



ERIC T. HIRANO, Acting Chairperson

EXECUTIVE ORDER NO. 2668
 "AHIHI - KINAU NATURAL AREA RESERVE"

TMK(2) 2-1-006: 086
 STATE OF HAWAII
 (DEPT. OF LAND & NATURAL RESOURCES)
 (OWNER)

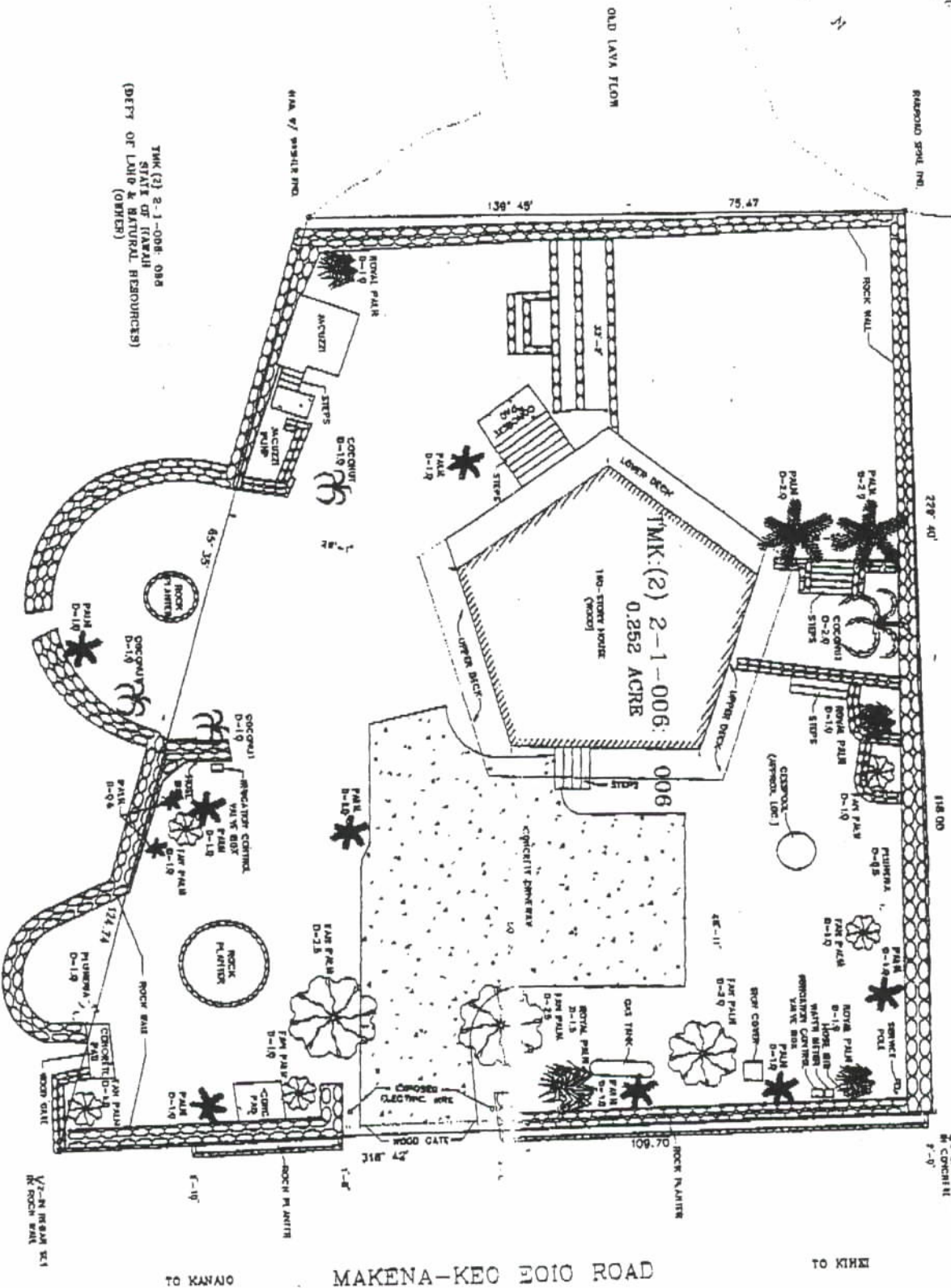
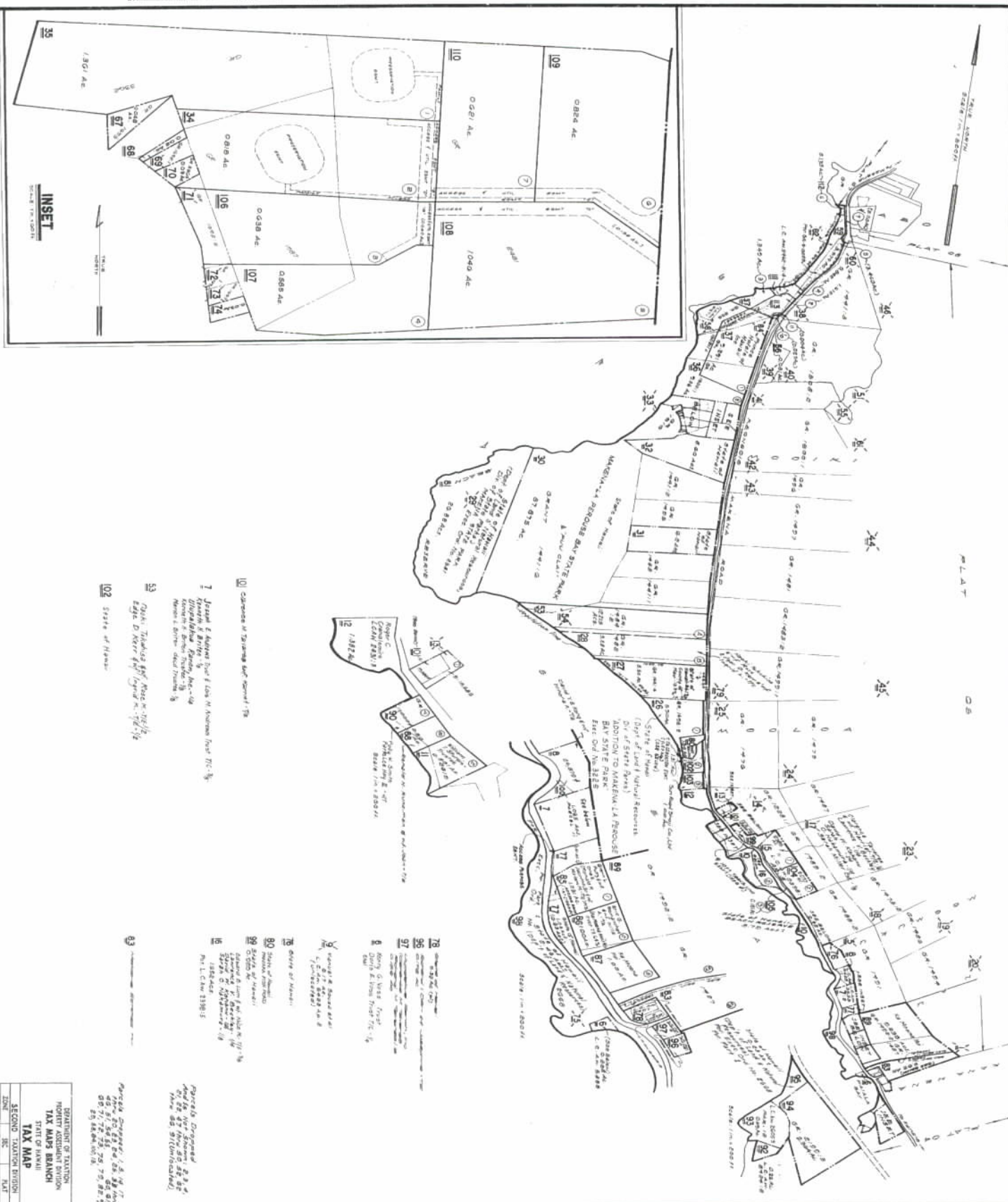


EXHIBIT B

(Ahiihi Bay)



FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION
PROPERTY ASSIGNMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

SECOND TAXATION DIVISION		
ZONE	SEC	PLAT
2	1	06

SCALE: 1 IN. = 65' NOTED



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 23,516

April 21, 2003

NON-EXCLUSIVE ROCKWALL EASEMENT

EASEMENTS 1 AND 2

Fronting Royal Patent 4971, Land Commission Award 5388 to Hoomilianuhe

Onau, Honuaula, Makawao, Maui, Hawaii

Being portion of the reclaimed (filled) Land of Ahihi Bay fronting
Royal Patent 4971, Land Commission Award 5388 to
Hoomilianuhe.

Being also a portion of Part 2 of Ahihi-Kinau Natural Area Reserve,
Governor's Executive Order 2668.

EASEMENT 1:

Beginning at the northwest corner of this easement and on the south
boundary of Royal Patent 4971, Land Commission Award 5388 to Hoomilianuhe, the
coordinates of said point of beginning referred to Government Survey Triangulation
Station "PUU OLAI" being 6578.79 feet South and 3689.04 feet East, thence running by
azimuths measured clockwise from True South:-

1. 245° 35' 108.97 feet along Royal Patent 4971, Land
Commission Award 5388 to
Hoomilianuhe;
2. 322° 26' 6.00 feet;



EXHIBIT "3"

April 21, 2003

3. Thence on a curve to the right with a radius of 9.50 feet, the chord azimuth and distance being:
52° 52' 30" 16.89 feet;
4. 115° 36' 9.26 feet;
5. 65° 52' 18.16 feet;
6. Thence on a curve to the right with a radius of 19.25 feet, the chord azimuth and distance being:
66° 43' 30" 38.39 feet;
7. 66° 32' 31.12 feet;
8. 142° 16' 1.09 feet to the point of beginning and containing an
AREA OF 1019 SQUARE FEET.

EASEMENT 2:

Beginning at the northeast corner of this easement and the southeast corner of Royal Patent 4971, Land Commission Award 5388 to Hoomilianuhe, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OLAI being "6527.82 feet South and 3801.30 feet East, thence running by azimuths measured clockwise from True South:-

1. 318° 42' 0.72 of a foot;
2. 50° 10' 9.65 feet;
3. 128° 37' 3.65 feet;



C.S.F. No. 23,516

April 21, 2003

4. 245° 35'

10.75 feet along Royal Patent 4971, Land Commission
Award 5388 to Hoomilianuhe to the point of
beginning and containing an AREA OF 21
SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: 

Thomas H. Oi
Land Surveyor

gm

Compiled from maps and
desc. prepared by Newcomer-Lee
Land Surveyor, Inc., CSF 16807
and other Govt. Survey Records.

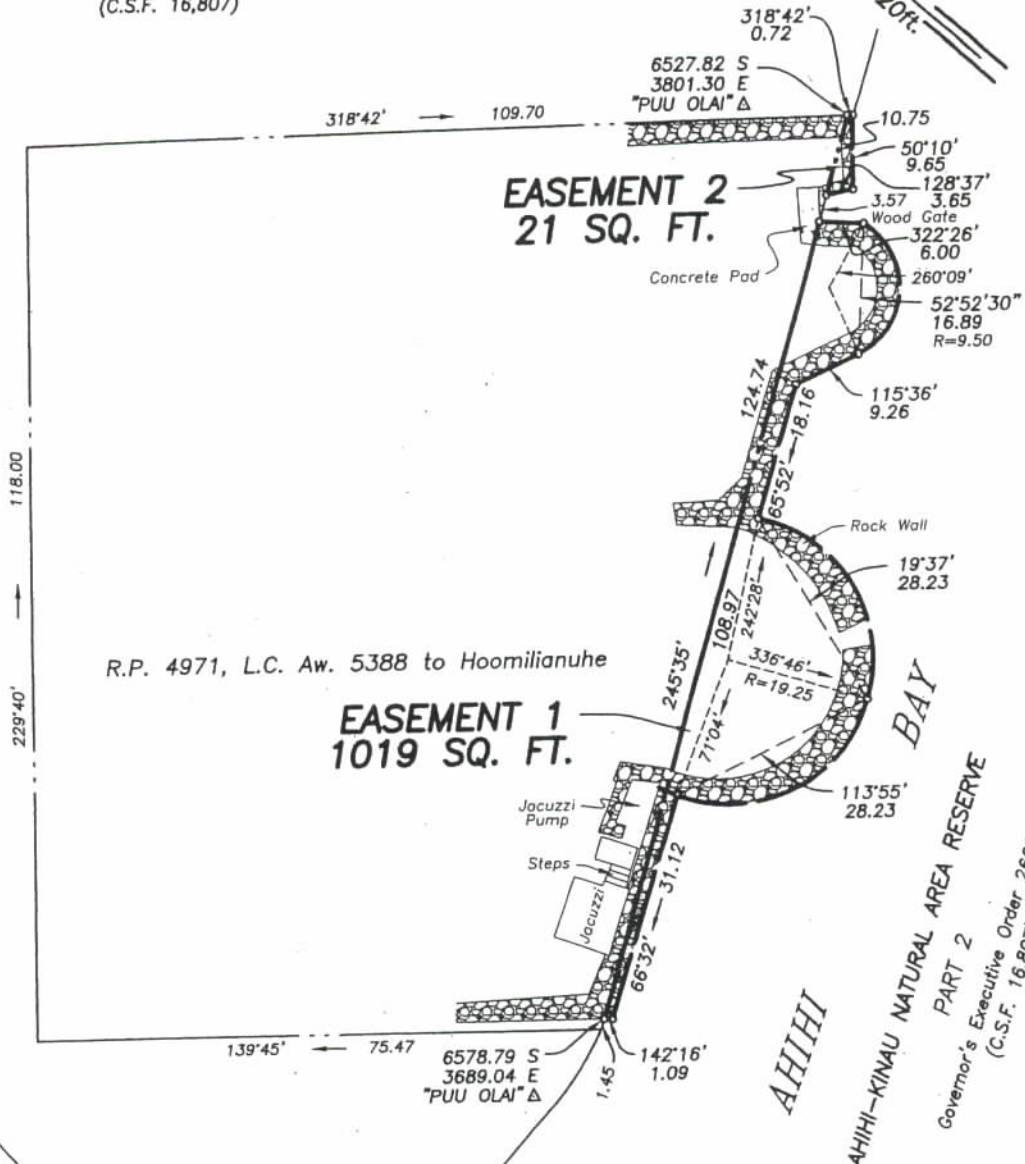


AHII-KINAU NATURAL AREA RESERVE

PART 1

Governor's Executive Order 2668
(C.S.F. 16,807)

TRUE NORTH
SCALE: 1 in. = 20 ft.



PRELIM. APPR'D.
Department of the
Attorney General

REDUCED NOT TO SCALE

**NON-EXCLUSIVE ROCKWALL EASEMENT
EASEMENTS 1 AND 2**

Fronting Royal Patent 4971, Land Commission Award 5388 to Hoomilianuhe

Onau, Honuaula, Makawao, Maui, Hawaii

JOB Ma-54(03)

C. BK.

Scale: 1 inch = 20 feet

Fronting Parcel 6 of TMK: 2-1-06

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C.S.F. NO. 23,516

STATE OF HAWAII

JGL April 21, 2003